

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

TONAWANDA COKE CORPORATION and
MARK L. KAMHOLZ,

Defendants.

ORDER
10-CR-219S

Presently before this Court is Defendants' Motion for an Order Excluding Expert Opinion Testimony from government witnesses John Bourbon, Ness Tirol, and James G. Strickland.¹ (Docket No. 73.) Counsel argued the motion on February 6, 2013, and the Court reserved decision at that time, pending supplemental submissions.

The supplemental submissions have resulted in Defendants' acknowledgment that the EPA Region 2 laboratory was properly certified to use EPA Method 624 to test and analyze the Barrett Tanks samples for benzene. Defendants have therefore withdrawn their Daubert challenge and Motion for an Order Excluding Expert Opinion Testimony.²

Defendants request, however, that this Court order the production of certain documents that the government attached to Bourbon's declaration (Docket No. 116), which the government previously refused to produce on relevancy grounds, and to produce a

¹Defendants also sought to preclude the testimony of a fourth expert witness — Daniel Vollmer — but the government has indicated that Mr. Vollmer will not be called as an expert witness, thereby rendering this portion of Defendants' motion moot.

² See Defendants' Joint Response to the Government's Supplemental Submission Regarding Scientific Evidence, Docket No. 122, p. 1.

complete copy of the Region 2 laboratory's SOP C-89. To the extent that the government has not already done so, it is directed to produce to Defendants the four categories of documents related to Bourbon's declaration (as discussed in Defendants' supplemental submission, Docket No. 122) and a complete copy of SOP C-89, by February 15, 2013.

IT HEREBY IS ORDERED, that the Clerk of Court is directed to terminate Defendants' Motion for an Order Excluding Expert Opinion Testimony (Docket No. 73), which has been withdrawn.

FURTHER, that the government must produce the discovery set forth in this Order to Defendants by February 15, 2013.

SO ORDERED.

Dated: February 13, 2013
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court